

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the ratemaking implications for Pacific Gas and Electric Company (PG&E) pursuant to the Commission's Alternative Plan of Reorganization under Chapter 11 of the Bankruptcy Code for PG&E, in the United States Bankruptcy Court, Northern District of California, San Francisco Division, In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

Investigation 02-04-026  
(Filed April 22, 2002)

**ASSIGNED COMMISSIONER'S RULING GRANTING, IN PART,  
THE UTILITY REFORM NETWORK'S NOTICE OF INTENT  
TO CLAIM COMPENSATION AND MOTION FOR A PREAPPROVED FINDING  
OF SUBSTANTIAL CONTRIBUTION**

**I. Introduction**

The Utility Reform Network (TURN) filed its supplemental notice of intent (NOI) to claim compensation in this proceeding and its motion for a preapproved finding of substantial contribution with respect to the outside professional services that it seeks to retain for this proceeding.

**II. Supplemental Notice of Intent to Claim Compensation**

TURN filed its original NOI in this docket on August 12, 2002. The preliminary ruling of Administrative Law Judge Burton W. Mattson, issued September 6, 2002, found that TURN had demonstrated its eligibility for an award of compensation in this proceeding as a "customer" that would otherwise suffer significant financial hardship. TURN filed this supplemental NOI to

update its scope of participation and its estimate of potential compensation needed to meet the recent developments in this case.

TURN seeks to retain the services of qualified financial and legal professionals to analyze the terms of the proposed settlement between Pacific Gas and Electric Company (PG&E) and the Commission staff and to propose an alternative financing structure. TURN asserts that the structure will likely include the use of a securitized financing backed by a dedicated rate component (DRC) to achieve the settling parties' stated goal of restoring PG&E to investment grade credit status, but at the lowest possible cost to the utility's ratepayers. TURN expects to address the excessive cost and other elements of the proposed settlement that, in its opinion, appear contrary to the public interest.

TURN says that its preliminary review of the proposed settlement has indicated that the use of a DRC in conjunction with other changes to the proposed financing structure could save ratepayers between one-half billion and two billion dollars in future revenue requirements, without compromising PG&E's ability to emerge from bankruptcy with an investment grade credit rating. TURN believes that developing the alternative financing structure will require the services of expert professionals familiar with the workings of the financial markets and the requirements of the credit rating agencies. TURN states it will not be able to present a fully professional case in less than two months' time without the expenditure of considerably more than it is accustomed to spending in Commission proceedings.

Because professionals have not yet been retained, TURN says it cannot provide a detailed outline of the eventual prepared testimony. TURN is in the process of discussing the scope and cost of services it may retain. TURN offers the following proposed budget as an estimate of the additional compensation that it may request.



Outside Financial Consulting Services:

Senior Managing Director			
300 hours X \$760	=	\$ 228,000	
Managing Director			
300 hours X \$625	=	\$ 187,500	
Senior Advisor			
300 hours X \$625	=	\$ 187,500	
Director			
300 hours X \$425	=	\$ 127,500	
Associate Advisor			
300 hours X \$275	=	\$ 82,500	
Analyst			
300 hours X \$175	=	<u>\$ 52,500</u>	
<b>Subtotal Outside Financial Consultants</b>			<b>\$ 865,500</b>

Outside Legal Counsel:

Senior Partner			
400 hours X \$450	=	<u>\$ 180,000</u>	
<b>Subtotal Outside Legal Counsel</b>			<b>\$ 180,000</b>
<u>Expenses of Outside Consultants and Counsel</u>			<u>\$ 150,000</u>

**TOTAL ADDITIONAL OUTSIDE SERVICES = \$1,195,500**

This estimated project budget of \$1,195,500 is the amount for which TURN seeks preapproval. Any costs incurred in excess of this amount would either be the subject of a future motion and/or requested in the normal course of the traditional intervenor compensation process.

TURN offers the following estimate of its future internal staff and continuing consultant costs, which are **not** the subject of the preapproval request but rather would be the subject of a more traditional request for compensation following a decision in this matter:

Internal Legal Resources:

Supervising Attorney Robert Finkelstein		
200 hours X \$365	=	\$ 73,000
Senior Attorney Michel Peter Florio		
200 hours X \$435	=	\$ 87,000
Other Staff Attorneys		
100 hours X \$250	=	\$ 25,000

Continuing Consulting Services:

Financial Consultant Margaret Meal		
150 hours X \$150	=	\$ 22,500

<u>TURN Internal Expenses:</u>	=	<u>\$ 7,500</u>
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**TOTAL ADDITIONAL INTERNAL AND CONTINUING SERVICES=      \$215,000**

The foregoing statement of the scope of TURN's intended participation in this proceeding and the revised estimate of the additional compensation that may be sought together constitute TURN's supplemental NOI in this proceeding.

**III. Motion for a Preapproved Finding of Substantial Contribution and Other Related Relief**

In addition to the normal finding of eligibility for compensation, which TURN has already requested and received in this proceeding, TURN further moves for an order from the Commission or the Assigned Commissioner **preapproving a finding of substantial contribution** with respect to the additional outside professional services that TURN seeks.

TURN maintains this is a most extraordinary proceeding, requiring extraordinary relief. It points out the proposed settlement before the Commission would pre-determine significant elements of PG&E's rates for the next nine years. It says that rarely if ever has this Commission entertained such a sweeping settlement with such long-range implications. Moreover, the proceeding will be conducted under an extremely tight deadline, with a decision required by the end of this year. It argues that for consumer representatives to participate effectively and present a viable, financially credible alternative plan to restore PG&E to creditworthy status with less of an adverse impact on ratepayers than that of the proposed settlement, work must begin immediately. It proposes that if ratepayers will be expected to bear the substantial costs of restoring PG&E to creditworthy status, then at minimum the necessary financial transactions should at least be structured in such a way as to achieve that desired goal in the most economic manner possible from a ratepayer perspective.

TURN says that it has been in contact with qualified financial professionals who could provide expert testimony describing in detail an alternative plan of reorganization that could restore PG&E to financial health with a substantially smaller impact on ratepayers. However, qualified financial and legal professionals command premium compensation. Based on initial discussions with potential experts, TURN believes that the cost of the professional services that it is seeking to engage could easily surpass TURN's total annual budget. That cannot happen without the assurance that the work of TURN's professionals, consistent with the scope of work described above, will be found to constitute a substantial contribution.

In addition to the necessary finding of substantial contribution, TURN also requests a finding that its outside professionals can be compensated at their usual hourly rates, comparable to those paid to participants in the bankruptcy

proceeding itself, at least up to the amount of the project budget described above. In the context of this bankruptcy, the reality is that such rates, which could in some cases be as high as \$760 per hour, have routinely been billed and paid to a variety of specialized professionals. TURN believes that if it cannot be assured that it can recover the actual costs incurred to present its alternative proposal, it will be entirely unable to take on the financial risk of making that showing.

TURN also requests authorization to apply for an interim award of compensation, to provide progress payments to its outside professionals after the completion of major deliverables, such as expert testimony, hearings, and briefs.

TURN proposes to form an advisory committee to help oversee the progress of the project. Some of the entities that it expects to participate include the City and County of San Francisco, Consumers Union, Aglet Consumer Alliance, and the Office of Ratepayer Advocates, as well as representatives of the interests of larger customers, such as CLECA, CMTA, and the Farm Bureau. TURN will remain solely responsible for the related financial obligations and the overall quality of the work, but it expects the input of these other ratepayer representatives should help to assure that the finished product is one that has wide support from PG&E consumers generally.

Finally, TURN has been informed by some of the outside professionals with which it has been in contact that the acceptance of an engagement such as this one, with such enormous financial consequences, may require the execution by the client (in this case, TURN) of an indemnification agreement protecting the outside professionals from any liability that may arise from their undertaking such an engagement. Therefore, TURN requests authorization to enter into an indemnification agreement, with the assurance that any costs incurred by TURN under such agreement will be recoverable as part of TURN's award of compensation in this proceeding. Absent such assurance TURN may be

financially unable to proceed with the retention of experts contemplated by this motion, even if the Commission were to otherwise grant this request.

The Office of Ratepayer Advocates (ORA) and Consumers Union of U.S., Inc. (CU) support TURN. They argue that the proposed Settlement requires California ratepayers to contribute an estimated \$7 billion to discharge a creditworthy PG&E from bankruptcy, but ratepayer representatives (such as TURN, CU, and ORA) were not privy to the settlement discussion and now have less than two months to conduct discovery and prepare expert testimony. While admitting that the expected costs are “astronomical” (ORA’s word), they support TURN’s request in total.

PG&E opposes TURN’s renewed motion because “(1) it is contrary to the intervenor compensation statute and related Commission precedent; (2) it seeks compensation for work that is outside the scope of the proceeding; and (3) it is unnecessary for TURN to meaningfully participate in this proceeding, since TURN has already presented expert testimony (at much lower hourly rates) on alternative financing through a dedicated rate component.”

PG&E’s opposition is premature. My ruling does not give preapproval to TURN’s request; nor is the work proposed necessarily outside the scope of the proceeding. That can only be determined after the evidence is presented. PG&E’s statement that additional fees are “unnecessary for TURN to meaningfully participate in this proceeding” is gratuitous and condescending. If PG&E admits that “TURN has already presented expert testimony (at much lower hourly rates),” an issue arises regarding the hourly rates PG&E and the Commission staff are paying for expert testimony, which appear to be at least three or four times TURN’s.

I agree with TURN and its supporters regarding the extraordinary importance of this proceeding. And I agree with ORA that this proceeding



should be distinguished from the conventional proceeding in which intervenor compensation is requested and awarded. But I also agree that the request is astronomical. The financial consulting service as proposed has three directors, two advisors, and one analyst. The pyramid seems inverted. Nor are the fees reasonable in my opinion. The senior managing director is being paid at a rate of over \$1.5 million a year. I have no doubt there are well-qualified consultants with lower hourly rates.

I believe a more reasonable expense estimate for “Total Additional Outside Services” and “Total Additional Internal and Continuing Services” is \$800,000. I will not authorize the indemnification that TURN seeks. There is no basis whatsoever under the intervenor compensation statutes for this Commission to guarantee an intervenor’s agreement to indemnify its consultants.

TURN seeks a preapproved finding of substantial contribution with respect to the additional outside services. This kind of a finding, if permissible under § 1801, is one for the Commission rather than the Assigned Commissioner. Nevertheless, based on my experience (and the Commission’s experience) with the contributions of TURN in Commission proceedings, I have great confidence that the costs TURN incurs in this proceeding, regardless of its outcome, will be considered a substantial contribution by the Commission.

In summary:

It is reasonable to set an expense budget for TURN for the work of its outside professionals and additional internal services, up to \$800,000;

TURN may apply to this Commission for an interim award of compensation to provide progress payments to its outside professionals after the completion of major deliverables such as expert testimony, hearings, and briefs;

TURN's request for authorization to enter into an indemnification agreement is denied; and

TURN may seek an award of compensation under the Commission's customary after-the-fact procedures for its own internal staff work devoted to this proceeding.

Dated July 23, 2003, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Granting, in Part, The Utility Reform Network's Notice of Intent to Claim Compensation and Motion for a Preapproved Finding of Substantial Contribution on all parties of record in this proceeding or their attorneys of record.

Dated July 23, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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